

COCHISE COUNTY

Arizona Public Records Law 101

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Public Programs...Personal Service

Learning Objectives

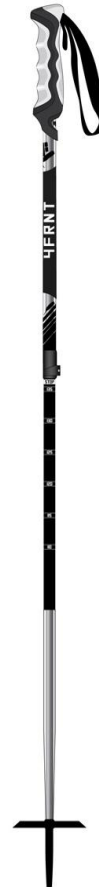
- Be able to **define a “public record”** (“PR”) under the Public Records Law (“PRL”);
- Know **who can request** public records;
- Understand a **public entity’s responsibilities** under the PRL;
- Understand the County’s PRR **procedure**; and
- Know where to **look for further information**.



What is a “Public Record”?

Public Records ARE:

- Defined by A.R.S. §§ 39-101 to 161;
- The records public bodies are required to keep; and
- The records reasonably necessary for public bodies **to provide an accurate accounting of their official duties and government-funded activities.**



TEST: “Those documents having a ‘substantial nexus’ with a government agency's activities qualify as public records.” Griffis v. Pinal Cnty., 215 Ariz. 1, 4 (2007).



What Are “Personal” Public Records?

Public Records can include your personal email, texts, and etc., even if you use your personal phone, personal computer, or other personal devices to send messages.



TEST: “Those documents having a ‘substantial nexus’ with a government agency's activities qualify as public records.” Griffis v. Pinal Cnty., 215 Ariz. 1, 4 (2007).

What is a “Public Record,” Part Deux

... A Note on E-mails

“E-mail messages created or received by a government employee are public records if they document the organization, functions, policies, decisions, procedures, operations, or other activities of the political organization.”

- Delete administrative/general correspondence email *immediately*
 - Including letters, memos, and other related records not related to a specific project or case, not on a Records Retention Schedule, and not executive correspondence.
- How long to retain PR e-mail depends on its classification

See: Arizona State Library, Archives, & Public Records, *Guidelines for Managing Public Records Sent and Received Via Electronic Mail*, available online: <http://www.azlibrary.gov/sites/azlibrary.gov/files/arm-guidelines-public-records-sent-received-email.pdf>



What is a “Public Record,” Part Trois

Public Records ARE NOT:

Records that document personal activities, even when those activities occur during working time, and/or just because a record is created on a publicly-owned (County) computer.



Destroying Public Records: Mother, May I?



A: Absolutely NOT: Not unless their mandatory retention period is up.

*Find retentions schedules here: <http://apps.azlibrary.gov/records/general.aspx>

Well, how about E-mails?



A: Absolutely NOT: Not unless their mandatory retention period is up.

*Find retention schedules here: <http://apps.azlibrary.gov/records/general.aspx>

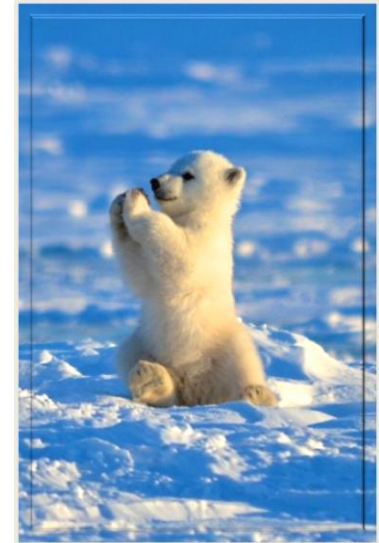
Who May Request PRs, & When



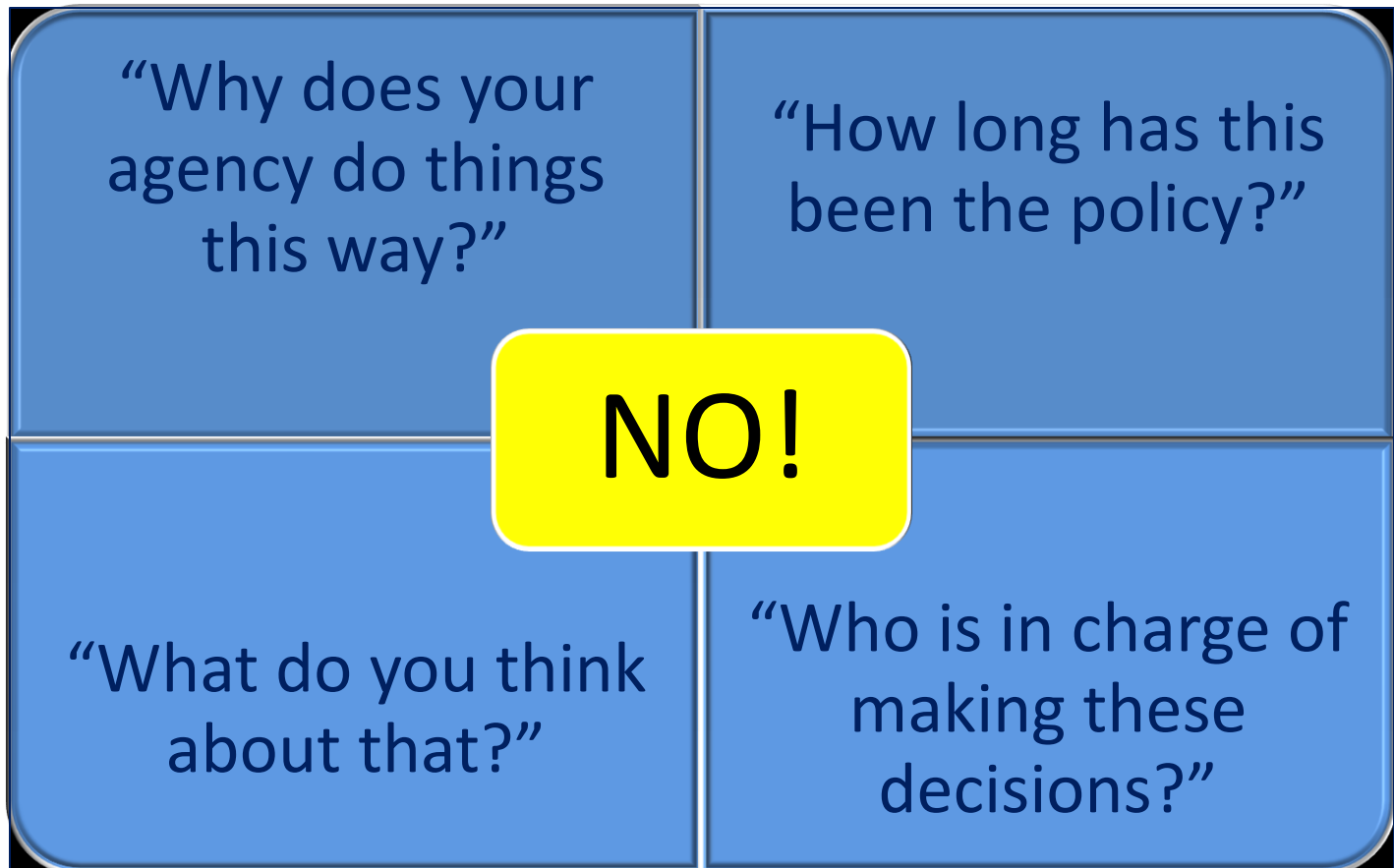
- Anyone may ask to **inspect and/or obtain copies** of public records
- The records must be **made available quickly**: as soon as is reasonably possible
 - Unreasonably refusing, not looking hard enough, dragging feet, or unreasonable delays means paying the requestor's attorney's fees plus damages

Withholding Log

- If requested, the custodian of the records of an agency shall also furnish an **index of records or categories of records that have been withheld** and **state the reasons that each record has been withheld**. A.R.S. § 39-121.01(D)(2). But note: “The custodian shall not include in the index information that is expressly made privileged or confidential in statute or a court order.” Id.
- When a government entity withholds documents, the requesting party may ask a court to perform an *in camera* inspection to determine whether the documents are properly withheld.



You DO NOT have to answer questions!



Exceptions to PR Disclosure

- When outweighed by legitimate governmental considerations of **privacy** OR **the best interests of the state**; and
- Records made **confidential by statute** (300+/-).
- **NOTE** that these remain PRs*.

*Why does this matter? For DESTRUCTION purposes.



What Does “Privacy” Mean?

“[T]he purpose of the [Public Records] law is to open *government* activity to public scrutiny, not to disclose [private] information about private citizens.”

Griffis v. Pinal Cnty., 215 Ariz. 1, 4 (2007).



What Privacy Does Not Mean



- There is a very strong presumption in favor of disclosure of PRs so that citizens can critically examine their government's activities
- Thus, “privacy” never means “avoiding embarrassment” with regard to official County business
 - e.g., disciplinary records, investigative summaries, disciplinary/investigative findings = always disclosable

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... More on Exceptions

Remember that it is always the withholding agency's burden to show by a preponderance that the reason for withholding the records outweighs the public's right to know.



- **Held “private”:**
 - death scene and autopsy photos from reporter.
 - 911 tape where transcript disclosed.
 - Dates of birth, addresses.
 - Informant's identity.
- **Held “best interests of the state”:** records concerning ongoing criminal investigations where disclosure would interfere with ongoing investigation.

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And litigants in cases against the public body, or employees thereof



... probably have an even greater right to the information than a “normal” citizen.

Procedure, Part I



- 1: Request is made
 - One time or ongoing
- 2: Acknowledgement
- 3: Collection & redaction
(see next slide for procedure)
- 4: Provision for inspection
at record holder's
department
- 5: Copies: usually per-
page charge
(but not if native doc = e-format)

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Procedure, Part Deux

1. Request is made

- Goes to **NEW PRR Coordinator**
- May be to **inspect** or for (prepaid!) **copies**

2. PRR Coordinator Notifies Department and gets ETA

3. Acknowledgement

- Done by PRR Coordinator



4. Department collects and redacts documents

- DOBs, SSNs, victims' names, etc.

5. Department sends PRR to PRR Coordinator if **further redaction** is needed

- Attorney-client, attorney work product, privacy, best interests of state, etc., or for help/answer Qs

6. Provision for requestor's inspection at department

7. Cost of Copies: see next slide

8. Notify PRR Coordinator when PRR is complete



Charges for Copies

- Non-commercial use

- May charge for per-page copying
- May charge a reasonable fee for time, equipment, and personnel used in producing copies of the records
 - We charge .50/page total
- May **not** charge for the cost of searching for the records ☹️
- If pursuant to subpoena, A.R.S. § 12-351 governs fee

- Commercial use

*PR for sale/resale/solicitation

- Requester must first provide a statement of purpose
- May charge a portion of the cost of obtaining the original or copies of the documents
 - How much: not specified
- May charge a reasonable fee for time, equipment, and personnel used in producing copies of the records
- May charge for the value of the reproduction on the commercial market



Free Copies of PRs



- Records concerning a claim for pension, allotment, allowance, compensation, insurance, or other benefits which are to be presented to the USA or a bureau or department thereof
- Victims of crime can obtain their own records without cost

For More Information

- Arizona Attorney General's Office's Agency Handbook, Chapter Six
(<https://www.azag.gov/agency-handbook>)
- Arizona Ombudsman's Booklet *Public Records Law*
(<http://www.azoca.gov/open-meeting-and-public-records-law/overview/>)

